

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, JANUARY 23, 2001  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Mayor Murphy at 10:06 a.m. Mayor Murphy recessed the regular meeting at 10:30 a.m. to convene the Redevelopment Agency. The regular meeting was reconvened by Mayor Murphy at 11:55 a.m. with all Council Members present and District 8 vacant. Mayor Murphy recessed the regular meeting at 11:59 a.m. to reconvene the Redevelopment Agency. The regular meeting was reconvened by Mayor Murphy at 12:00 p.m. with all Council Members present and District 8 vacant. The meeting was recessed by Mayor Murphy at 12:02 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:04 p.m. with District 8 vacant. Mayor Murphy reconvened the Redevelopment Agency at 2:12 p.m. Mayor Murphy adjourned the meeting at 2:26 p.m. to meet immediately in Closed Session in the 12<sup>th</sup> floor Conference Room to discuss existing and anticipated litigation matters.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Stallings-present
- (7) Council Member Madaffer-present
- (8) Vacant

Clerk-Abdelnour (pr/er)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Stallings-present
- (7) Council Member Madaffer-present
- (8) Vacant

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Comment by Dorcas Turoski regarding De Anza Mobile Home Park, and her feelings that the new City Council displays consideration, confidence, and maturity.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A003-041.)

PUBLIC COMMENT-2:

Comment by Ken Loch regarding the "Holy Spirit," and that he feels he is in a position to inspire the Community.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A041-058.)

**PUBLIC COMMENT-3: REFERRED TO THE CITY MANAGER**

Comment by Beverly Walker regarding traffic circles, roundabouts, and scrambled intersections. Ms. Walker expressed that many areas are in violation of the Americans with Disabilities Act, and requested that the Mayor and City Council Members respond to that issue.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A058-098.)

**PUBLIC COMMENT-4: REFERRED TO COUNCIL MEMBER WEAR**

Comment by Sera Larkins regarding continuing the sidewalk at the end of Goldfinch Street at West Lewis Street to enable an art structure to be moved for safety reasons.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A156-207.)

**PUBLIC COMMENT-5:**

Comment by Ron Boshun regarding the Ballpark, and regarding the behavior of the City Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A207-234.)

**COUNCIL COMMENT:**

**ITEM-CC-1:**

Comment by Council Member Atkins responding to Ms. Walker's comments and expressing that there were two overriding issues; one of how traffic calming devices such as roundabouts can mesh with ADA requirements and laws. The second issue is one of common sense, i.e., the City has pedestrian ramps going in all over as part of water and sewer replacement jobs. As part of being ADA compliant, Council Member Atkins asked how can the City when putting in ramps and looking at the circumstances in each situation, make the determination of how to be in compliance. Council Member Atkins suggested this subject come back as a policy issue.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A098-120.)

**ITEM-CC-2:**

Comment by Council Member Maienschein thanking Ms. Walker for coming to Council and bringing the issue of ADA compliancy regarding traffic calming devices to the Council's attention. Council Member Maienschein reiterated Council Member Atkins' comments stating that it defies logic when a fire hydrant is put in the middle of an access ramp.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A120-151.)

ITEM-330: Weller Companion Unit.

Matter of the appeal by James Leighton, from the decision of the Planning Commission in approving Conditional Use Permit (CUP) No. 99-1317 with conditions, to maintain an approximately 576 square-foot second-story companion unit containing a kitchen with a wet bar and bedroom/living room area with a 3/4 bath, to an existing single-family residence located at 6459 Celia Vista Drive in the Mid-City Eastern Area Community Plan.

(CUP-99-1317. Mid-City Eastern Area Community Plan. District-7.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution to deny the appeal and uphold the decision of the Planning Commission to grant the permit:

(R-2001- ) CONTINUED TO TUESDAY, JANUARY 30, 2001

Adoption of a Resolution granting or denying the appeal and granting or denying Conditional Use Permit (CUP) No. 99-1317, with appropriate findings to support Council action.

**OTHER RECOMMENDATIONS:**

Planning Commission on September 28, 2000 voted 5 - 0 to approve the appeal and approve Conditional Use Permit No. 99-1317; was opposition.

Ayes: Anderson, Butler, Steele, Brown, Stryker  
Not present: White, Skorepa

The Eastern Area Community Planning Group on February 8, 2000 voted 7-1-0 to recommend denial of the project.

**CITY MANAGER SUPPORTING INFORMATION:**

**BACKGROUND**

The subject site in the Mid-City-Eastern Area Community Plan was developed in the 1950s with a two-story single-family residence with a one-car garage in the R1-5000 zone. The companion

unit is located on the second floor at the rear of the residence. The companion unit is approximately 576 square feet and the existing single-family residence is 1,382 square feet.

The companion unit contains a kitchen with a wet bar, a bedroom/living room area, and a 3/4 bath. The companion unit is attached to the single-family residence but has no interior access to the residence. Two additional off-street parking spaces have been provided in the west interior side yard which corrects the required off-street parking deficiency for the single-family residence while adding one additional off-street parking space required for the companion unit.

The surrounding neighborhood is developed with small to medium size residences that provide at least one off-street parking space. No other Conditional Use Permit for a companion unit has been approved in this Eastern Area Community Planning Area. Casita del Patio Companion Unit No. 86-0209 located at 4171 58<sup>th</sup> Street was approved by City Council on July 15, 1986.

This neighborhood is in close proximity to San Diego State University where properties are often rented by students. The Hearing Officer based the decision of denial as specified in attachment 5, partly citing there were enforcement problems when properties are rented by students. However, in accordance with the draft permit conditions, the occupant of the companion unit must be age 55, a disabled person, or a member of the primary unit's family. Other single-family residences in this neighborhood offered for rent do not have this restriction.

Although the Eastern Area Community Planning Group voted against the project (see attachment 3), neighbors that live in close proximity signed a petition in support of this project (see attachment 4). The Eastern Area Community Planning Group was mainly concerned with the property becoming a rental that would be occupied by college students.

Terry and Susan Weller appealed the Hearing Officer's decision made at the July 19, 2000 hearing that a Factual Error occurred (attachment 8). The Weller's project initially went to hearing on June 28, 2000, and was continued by the Hearing Officer to July 19, 2000, because the applicants needed to provide one additional off-street parking space on the plans. There was no public testimony in opposition at the June 28<sup>th</sup> hearing. The Weller's removed a fence and resubmitted revised plans to show the additional parking space prior to the scheduled hearing on July 19, 2000. The Hearing Officer at the July 19, 2000, public hearing, considered public testimony and rendered a decision of denial. The Weller's believe that they are in compliance with the conditions and criteria set forth in San Diego Municipal Code 101.0512 and request that the project be approved.

The Planning Commission heard testimony in favor of the appeal and in opposition of the appeal on September 28, 2000. The Planning Commission voted 5-0 (Commissioners White and

Skorepa not present) to approve Susan & Terry Weller's appeal of the Hearing Officer's decision of denial and approved the conditional use permit CUP No. 99-1317, citing that all of the necessary findings could be made.

**DISCUSSION OF ISSUES (OR) PROJECT ANALYSIS**

The appeal filed by the Eastern Area Community Planning Committee (Attachment 9) of the Planning Commission's decision of approval at the September 28, 2000 hearing is based on their belief that this is in conflict with the Land Use Plan, Council Policy or Municipal Code and is of City-wide Significance.

They are concerned that this unit will be used as a rental for college students. The proposed permit conditions however, state that the occupants of the unit must be a member of the owner's family, or a person 55 years of age or older, or a disabled person.

The Planning Commission nonetheless, found that this project is not in conflict with the Land Use Plan, Council Policy or Municipal Code, nor is it of City-wide Significance. The project as proposed, is identified in the Mid-City-Eastern Area Community Plan which encourages the creation of additional rental housing by upgrading and/or rehabilitating existing single family residences. The Weller Companion Unit complies with all of the R1-5000 zoning development regulations and is an interior remodel that does not affect the exterior design of the residence. Therefore, City staff recommends approval of the Conditional Use Permit. This project, if approved, will be consistent with other approved Conditional Use Permits for Companion Units throughout the City of San Diego (see Attachment 10). With this fact, City Staff believes that this project is not of City-wide Significance and recommends that the Council deny the Appeal and Uphold the decision of the Planning Commission.

**NOTE:** On December 12, 2000 Council voted unanimously with Council District 8 vacant to hear the appeal.

**FISCAL IMPACT:** None.

All costs associated with processing this application are paid from a deposit account maintained by the applicant.

**CODE ENFORCEMENT IMPACT:**

The Neighborhood Code Enforcement Department has an open violation case on this project. The property owners, Susan and Terry Weller, were notified that they needed to apply for and obtain a Conditional Use Permit for a companion unit in order to legalize the unit.



**HOUSING AFFORDABILITY IMPACT:**

The companion unit will contribute to available affordable housing for a person(s) with a disability or is a senior citizen age 55 and older. The companion unit, if not occupied by a member of the family residing in the single-family residence, can only be rented to persons meeting the above criteria.

Loveland/Christiansen/LDH

**LEGAL DESCRIPTION:**

The project site is located at 6459 Celia Vista Drive in the R1-5000 zone of the Mid-City Eastern Area Community Plan and is more particularly described as Lot 88, Cosgrove Heights Annex No. 1, Map 2645.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15303.

**FILE LOCATION:** PERM-99-1317(65)

**COUNCIL ACTION:** (Tape location: D005-077.)

MOTION BY MADAFFER TO CONTINUE TO TUESDAY, JANUARY 30, 2001, TO ALLOW BOTH SIDES AN OPPORTUNITY TO PRESENT THEIR CASE. Second by Stevens. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Stallings-yea, Madaffer-yea, District 8-vacant, Mayor Murphy-yea.

ITEM-331: Public Right-of-Way Use Permit Procedures.

Matter of approving, conditionally approving, modifying or denying a proposed amendment to the Land Development Code to add a Section, "Public Right-of-Way Use Permit Procedures."

(Districts-Citywide.)

**CITY MANAGER'S RECOMMENDATION:**

Introduce the following ordinances in Subitem A and Subitem B:

Subitem-A: (O-2001-20) CONTINUED TO TUESDAY, FEBRUARY 13, 2001

Introduction of an Ordinance amending Chapter 12, Article 6, of the San Diego Municipal Code by adding a new Division 9 titled "Public Right-of-Way Use Permit Procedures" and by adding new Sections 126.0901, 126.0902, 126.0903, 126.0904, 126.0905, 126.0906, and 126.0907, all relating to Development Permits.

Subitem-B: (O-2001-44) CONTINUED TO TUESDAY, FEBRUARY 13, 2001

Introduction of an Ordinance amending Chapter VI, Article 2, Division 3 of the San Diego Municipal Code by amending Sections 62.0301 and 62.0302 pertaining to Applications.

**COMMITTEE ACTION:**

Initiated by Land Use and Housing Committee on 9/20/2000, Item #4.  
LU&H voted 4-0 to approve the City Manager's Report CMR-00-190, which directed staff to take the draft ordinance to the Planning Commission for recommendation and to City Council for approval. Councilmembers Wear, Kehoe, Stevens, and McCarty voted yea.

**OTHER RECOMMENDATIONS:**

Planning Commission on October 19, 2000 voted 6 - 1 to recommend to the City Council that they approve the ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures." The Planning Commission further recommended that staff process requests for Public Right-of-Way Use Permits as a Process Four decision to ensure adequate public notice and environmental review; no opposition.

Ayes: White, Stryker, Steele, Anderson, Brown, Butler  
Nays: Skorepa

The Code Monitoring Team considered the proposed Public Right-of-Way Use Permit Procedures on October 11, 2000. The Team voted 10-0 to recommend that the Public Right-of-Way Use Permit should be processed as a Process Four. The Team further recommended that the Public Right-of-Way Use Permit Procedures should entail the requirement that the applicant obtain the notarized permission of all property owners abutting the rights-of-way proposed for encroachment.

**CITY MANAGER SUPPORTING INFORMATION:**

**BACKGROUND**

The City has received requests from several organizations to install monofilament wire over the public right-of-way to help establish boundaries to enclose areas of the City. The area enclosed by such a boundary would be known as an Eruv (Eruvin, plural). The Land Use and Housing Committee members were apprised of these requests and that the City Manager would develop a policy and approval process to address these requests, which would constitute encroachments.

The City currently has an encroachment approval process to enable property owners to place encroachments within the public right-of-way where they hold the underlying fee title. For the City to grant encroachments over public rights-of-ways dedicated over privately held properties not owned by an applicant, the San Diego Municipal Code would need to be amended.

**DISCUSSION**

Encroachments within the public right-of-way are addressed under Section 62.0302 of the Municipal Code. However, the only encroachments authorized under this Section are those for which the applicant owns the underlying property. In such cases, an Encroachment Maintenance and Removal Agreement is recorded against the owner's property. This agreement binds the owner to maintain the encroachment in a safe and sanitary condition. It also binds the owner to indemnify the City from any liability arising from the encroachment.

The proposed amendment, Public Right-of-Way Use Permit Procedures, would allow for encroachments where the applicant does not hold the underlying fee title. The draft ordinance, provides that the applicant for an encroachment, would be required to maintain the encroaching structure in a safe condition. The applicant would also have to indemnify the City from any liability arising from the encroachment. Staff recommends that the Public Right-of-Way Use Permit be processed as a Process Four level decision appealable to the City Council. The Code Monitoring Team (a Land Development Code update oversight committee) and the Planning Commission recommend that the permit be a Process Four level approval with a decision by the Planning Commission appealable to the City Council.

The proposed amendment does not supersede the provisions of other applicable regulations such as the San Diego Municipal Code Section 61.0509 (Prohibition of Poles and Wires in Underground Utility Districts) nor franchise agreements. Pursuant to the proposed ordinance, an applicant for a Public Right-of-Way Permit will still be required to comply with all applicable laws and regulations.

The Public Right-of-Way Use Permit would provide City staff greater options in dealing with encroachment requests. In addition to the Eruvin requests, the following encroachments would be possible:

- sewer and water laterals
- private bus shelters
- non-franchise phone booths
- private mail collection boxes

#### **CONCLUSION**

Staff recommends that City Council approve an ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures," and that staff be directed to process requests for the Public Right-of-Way Use Permit as a Process Four. The Public Right-of-Way Use Permit Procedures will provide the City a mechanism to consider requests for these encroachments when they are to the public good. The findings which must be made for approval of the encroachment will ensure protection of abutting property owners' rights.

#### **ALTERNATIVES**

1. Adopt the proposed ordinance for Public Right-of-Way Use Permit Procedures with the revision that the approval of the abutting property owners be obtained for proposed encroachments.
2. Adopt the proposed ordinance as a Process Two level approval, under which staff's decision is appealable to the Planning Commission.
3. Do not adopt the ordinance for Public Right-of-Way Use Permit Procedures.

#### **FISCAL IMPACT:**

None.

Loveland/Christiansen/DW

**NOTE:** This activity is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15060(c)(3) (not a project). However, future applications for non-ministerial Public Right-of-Way Use Permits would be subject to environmental review.

FILE LOCATION: SUBITEMS A & B: NONE

COUNCIL ACTION: (Tape location: A235-268.)

MOTION BY STALLINGS TO CONTINUE THIS ITEM TO TUESDAY, FEBRUARY 13, 2001, AT THE REQUEST OF THE CITY MANAGER TO RECONCILE ISSUES REGARDING THE MUNICIPAL CODE AND THE LAND DEVELOPMENT CODE. Second by Wear. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Stallings-yea, Madaffer-yea, District 8-vacant, Mayor Murphy-yea.

ITEM-332: Reloan of City Funds to the Redevelopment Agency.

(Districts-3, 4, and 8.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2001-1032) RETURNED TO THE CITY MANAGER

Authorizing the acceptance of repayment of \$251,042 in Community Development Block Grant (CDBG) funds previously loaned to the Redevelopment Agency of the City of San Diego (the Agency) for the Market Street Industrial Park Redevelopment Project;

Authorizing the reloan and transfer of \$110,654 of CDBG funds as an interest bearing loan to the Agency to be used for the payment of the Section 108 loan for the City Heights Urban Village Project, and to be repaid as soon as practicable from tax increment or other appropriate and available revenue;

Authorizing the relloan and transfer of \$140,388 of CBDG funds as an interest bearing loan to the Agency to provide funds for project and administrative costs for the Barrio Logan Redevelopment Project, and to be repaid as soon as practicable from tax increment or other appropriate and available revenue.

**CITY MANAGER SUPPORTING INFORMATION:**

As part of the complex financing plan of the City Heights Urban Village project, an existing Section 108 loan was to be refinanced to reduce the annual payments and extend the term of the loan. The refinanced loan, along with the long-term debt issued for this project, was structured to match revenues of the project and the project area with its long-term obligations. The refinancing process has not yet been completed and payments on the existing loan are required February 1, 2001. As it was anticipated that the refinanced loan with lower payments would be in place by this time, authorization for additional funds is needed to allow for the full payment to be made. On December 5, 2000, the effectiveness of the Redevelopment Plan for the Market Street Industrial Park Redevelopment Project was terminated. As part of the termination, loans made to the project area from CDBG funds are planned to be fully repaid to the City from tax increment generated within the project area. \$251,042 has been included in the Redevelopment Agency Fiscal Year 2001 Budget for this purpose. With the return of these funds to the CDBG program, the City Council may, at its discretion, allocate these funds to any CDBG eligible use. It is recommended that these funds be loaned again to the Redevelopment Agency to provide funds for the impending Urban Village Section 108 loan payment, as well as to provide needed funds for ongoing costs for the Barrio Logan Redevelopment Project Area. The Barrio Logan Redevelopment Project Area is not yet generating sufficient tax increment to support all project management costs of the Redevelopment Agency related to the adopted plan. Additional funds are critical in ensuring the completion of the Mercado project, and development of the neighboring Trolley Site. In addition, this loan would eliminate the need for an additional request of CDBG funds during the allocation process for next fiscal year. All funds will be repaid by the Redevelopment Agency when the project areas generate sufficient tax increment.

**FISCAL IMPACT:**

The Fiscal Year 2001 CDBG Budget will be increased by \$251,042 to reflect the repayment of loans previously made to the Market Street Industrial Park Redevelopment Project. The availability of these funds allow for a relloan to the Redevelopment Agency to provide funds in the amount of \$110,654 for the City Heights Urban Village Section 108 loan payment due February 1, 2001, and to provide needed funds to the Barrio Logan Redevelopment Project Area in the amount of \$140,388. All funds will be repaid by the Redevelopment Agency when the project areas generate sufficient tax increment revenue.

Loveland/Cunningham/EMD

Aud. Cert. 2100764.

**NOTE:** See the Redevelopment Agency Agenda of January 23, 2001 for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A269-300.)

MOTION BY STEVENS TO RETURN THIS ITEM AT THE REQUEST OF THE CITY MANAGER TO RECONCILE HOW THE FUNDS WILL BE DISPOSED OF. Second by Maienschein. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Stallings-yea, Madaffer-yea, District 8-vacant, Mayor Murphy-yea.

ITEM-333: Budget Actions for FY 2000/2001.

(See SEDC Report No. 01-002.)

**SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION'S  
RECOMMENDATION:**

Adopt the following resolution:

(R-2001-984) ADOPTED AS RESOLUTION R-294476

Authorizing acceptance of repayment by the Redevelopment Agency of the City of San Diego (Agency) of \$224,558 in Community Development Block Grant (CDBG) funds previously loaned to the Agency for the Mt. Hope Redevelopment Project Area;

Authorizing the reloan and transfer of the same CDBG funds as an interest bearing loan of \$224,558 to the Agency to be used in the FY 2000/2001 Budget for the Central Imperial Redevelopment Project Area, to be repaid as soon as practicable from tax increment or other appropriate and available revenue.

Aud. Cert. 2100737.

**NOTE:** See the Redevelopment Agency Agenda of January 23, 2001 for a companion item.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Tape location: A265-273.)

MOTION BY WEAR TO ADOPT. Second by Madaffer. Passed by the following vote:  
Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Stallings-yea,  
Madaffer-yea, District 8-vacant, Mayor Murphy-yea.

ITEM-334: Resurfacing and Refurbishing of Parcel 5 (One America Plaza Hotel Site).

(See memorandum from Centre City Development Corporation dated 12/1/2000.  
Columbia Sub Area of the Centre City Redevelopment Project. District-2.)

**CENTRE CITY DEVELOPMENT CORPORATION'S RECOMMENDATION:**

Adopt the following resolution:

(R-2001-1016) ADOPTED AS RESOLUTION R-294477

Approving the resurfacing and refurbishing of Parcel 5 (One America Plaza Hotel Site) in the Columbia Sub Area of the Centre City Redevelopment Project and making certain findings with respect to the payment for the improvement.

**NOTE:** See the Redevelopment Agency Agenda of January 23, 2001 for a companion item.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Tape location: C274-280.)

MOTION BY WEAR TO ADOPT. Second by Madaffer. Passed by the following vote:  
Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Stallings-yea,  
Madaffer-yea, District 8-vacant, Mayor Murphy-yea.



**ADJOURNMENT:**

The meeting was adjourned by Mayor Murphy at 2:26 p.m. in honor of the memory of Don Nay as requested by Mayor Murphy.

FILE LOCATION:                      AGENDA

COUNCIL ACTION:                      (Tape location: D242-249).